Supreme Court, U.S.
FILED
06-195 AUG 4 - 2006
OFFICE OF THE CLERK

No. 06-

IN THE

Supreme Court of the United States

SAINT MATTHEW'S CHURCHES, INC., *et al.*,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA and VALERIJA KACHAVOS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

ROY G. WEATHERUP
Counsel of Record
STEVEN G. GATLEY
LEWIS BRISBOIS BISGAARD
& SMITH, LLP
221 North Figueroa Street
Suite 1200
Los Angeles, California 90012
(213) 250-1800

J. C. JOYCE
JOYCE AND POLLARD
515 South Main Street
Suite 300
Tulsa, Oklahoma 74103
(918) 585-2751

Attorney for Petitioners

202592

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED FOR REVIEW

1. Under the First Amendment, as interpreted by this Court in *United States v. Ballard*, 322 U.S. 78, 64 S.Ct. 882, 88 L.Ed. 1148 (1944), does a federal district court lack jurisdiction to adjudicate a claim, where the claim depends on proof of the truth or falsity of religious beliefs?

2. Does a federal District Court lack jurisdiction to entertain an action under the Racketeer Influenced and Corrupt Organizations Act (RICO), where the plaintiff's claim requires proof of the truth or falsity of religious beliefs and where there is no allegation of financial loss on the part of the plaintiff caused by the defendant's conduct?

3. Where the assertion of jurisdiction by a federal District Court infringes upon freedom of religion, does the resulting irreparable injury nullify the discretion that would ordinarily exist in a United States Circuit Court of Appeals to deny summarily a petition for a writ of mandamus?

LIST OF PARTIES TO THIS PROCEEDING

The petitioners are defendants named in the case of *Kachavos v. Ewing*, case number CV05-7197 GPS (FMOx), in the United States District Court for the Central District of California. They are Saint Matthew's Churches, Inc., James Eugene Ewing, Milton Ray McElrath, Sr., Milton Ray McElrath, Jr., Deborah McElrath, J.C. Joyce, Elisabeth Anne Rooney Ewing, and Donald R. Luce.

The United States District Court for the Central District of California is named as a respondent, since the Court was named as a respondent in the mandamus proceedings in the United States Court of Appeals for the Ninth Circuit, *In Re Saint Matthew's Churches, Inc., et al. v. United States District Court*, Ninth Circuit case number 06-71204.

The other respondent is Ms. Valerija Kachavos, the sole plaintiff in the District Court, and the sole real party in interest in the Ninth Circuit.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
LIST OF PARTIES TO THIS PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF CITED AUTHORITIES	v
TABLE OF APPENDICES	vi
INTRODUCTION	1
CITATIONS OF OPINIONS AND ORDERS	2
JURISDICTIONAL STATEMENT	2
CONSTITUTIONAL PROVISION INVOLVED ...	3
STATEMENT OF THE CASE	3
REASON FOR GRANTING PETITION	5
I. No Court in the United States of America Has Subject Matter Jurisdiction to Adjudicate a Claim That Involves Proof of the Truth or Falsity of Religious Beliefs, and Any Such Claim Must Be Dismissed	5

Contents

Page

II. No Court Has Jurisdiction to Entertain a Claim Under the Racketeer Influenced and Corrupt Organizations Act (RICO), Where the Claim Requires Proof of the Truth or Falsity of Religious Beliefs and Where the Defendants' Alleged Wrongful Conduct Did Not Proximately Cause Any Financial Loss to the Plaintiff 8

III. Where a Federal District Court Has Exercised Jurisdiction in Violation of a Defendant's Constitutional Rights, Immediate Irreparable Harm Results, Thereby Depriving a Circuit Court of Appeals of the Discretion to Deny a Petition for a Writ of Mandamus Without Reaching the Merits of the Constitutional Issues Presented 9

IV. Conclusion 10

TABLE OF CITED AUTHORITIES

Page

Federal Cases:

Anza v. Ideal Steel Supply Corp., __ U.S. __, 126 S.Ct. 1991, 164 L.Ed.2d 720 (2006) 8

Bauman v. United States District Court, 557 F.2d 650 (9th Cir. 1977) 4, 9

Branti v. Finkel, 445 U.S. 507 (1980) 10

Elrod v. Burns, 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976) 9, 10

United States v. Ballard, 322 U.S. 78, 64 S.Ct. 882, 88 L.Ed. 1148 (1944) ..... i, 5, 6, 7, 8

State Cases:

Tilton v. Marshall, 925 S.W.2d 672 (Texas Supreme Court,1996) 10

Federal Constitutional Provisions, Statutes, and Rules:

Constitution of the United States, First Amendment 1, 3, 10

Racketeer Influenced and Corrupt Organization Act (RICO) ..... *passim*

28 U.S.C. § 1254 2

Federal Rules of Civil Procedure, rule 12(b)(6) ... 1

TABLE OF APPENDICES

Page

Appendix A — Order Of The United States Court Of Appeals For The Ninth Circuit Filed June 23, 2006 ..... 1a

Appendix B — Civil Minutes - General Dated November 21, 2005 ..... 3a

INTRODUCTION

The petitioners are a church and seven individuals affiliated with it. Their religious freedom, guaranteed by the First Amendment to the Constitution of the United States, has been violated by the maintenance of a lawsuit in which the plaintiff seeks to prove the falsity of the church's religious beliefs. The lawsuit has been brought under the Racketeer Influenced and Corrupt Organizations Act (RICO) by a fired former employee of the church. The predicate acts under RICO alleged by the disgruntled former employee involve alleged mail fraud and wire fraud as to church members, rather than injury to business or property of the plaintiff herself caused by the defendants' wrongful conduct. The plaintiff was not a church member.

In the District Court, the defendants moved to dismiss, pursuant to rule 12 (b)(6) of the *Federal Rules of Civil Procedure*. The District Court denied the motion. The defendants filed a Petition for a Writ of Mandamus, which was denied by the United States Court of Appeals for the Ninth Circuit, but not on the merits.

The petitioners in this Court contend that the decisions of the District Court and Ninth Circuit are erroneous, in light of this Court's opinions. The Supreme Court of the United States has clearly held that no Court has jurisdiction to adjudicate the truth or falsity of religious beliefs. This Court has also held that no RICO claim can be maintained in the absence of injury to the plaintiff's business or property proximately caused by the conduct of the defendants, thus negating jurisdiction. Finally, the Supreme Court has

ruled that deprivation of a constitutional right, even for a short time, represents irreparable harm. The existence of irreparable harm nullifies the discretion of a circuit court to deny a petition for a writ of mandamus where the deprivation of a constitutional right has occurred, according to the Ninth Circuit's case law.

CITATIONS OF OPINIONS AND ORDERS

This Petition for a Writ of Certiorari arises from a civil RICO action pending in the United States District Court for the Central District of California, *Kachavos v. Saint Matthew's Churches, Inc.*, CV05-7197 GPS (FMOx). The defendants' Motion to Dismiss was denied in an unpublished order entered on December 5, 2005. [Appendix B.]

On March 1, 2006, the defendants filed a Petition for a Writ of Mandamus in the United States Court of Appeals for the Ninth Circuit, case number 06-71204. This petition was denied in an unpublished order filed on June 23, 2006. [Appendix A.]

JURISDICTIONAL STATEMENT

Jurisdiction was invoked pursuant to 28 U.S.C. section 1254. The United States Court of Appeal for the Ninth Circuit has denied a petition for a writ of mandamus. [Appendix A.] The Ninth Circuit found that "[p]etitioners have not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus." [Appendix A.] The Circuit Court did not find that the District

Court properly concluded that it had the jurisdiction to adjudicate the truth or falsity of religious beliefs.

CONSTITUTIONAL PROVISION INVOLVED

In pertinent part, the First Amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

STATEMENT OF THE CASE

On October 4, 2005, plaintiff Valerija Kachavos filed a civil RICO complaint against petitioners in the United States District Court for the Central District of California, *Kachavos v. Saint Matthew's Churches, Inc.*, case number CV05-7197 GPS (FMOx). She asserted RICO violations, but all of her allegations involved the claimed falsity of the religious doctrines and beliefs of Saint Matthew's Churches, Inc. She alleged that the defendants fraudulently claimed that God put people in the church ministry in touch with each other. She also claimed that the defendants fraudulently represented that their Covenant Prayer Cup was sent at the direction of the Holy Spirit. Through such false representations, it was claimed, the defendants engaged in wire fraud and mail fraud.

The threshold issue before the District Court, raised by the defendants in their Motion to Dismiss, was whether a court has the jurisdiction to adjudicate the truth or falsity of religious beliefs so as to determine the plaintiff's case.

The second major issue raised by the Motion to Dismiss was whether the plaintiff's complaint stated a RICO claim, in view of the absence of injury to the business or property of the plaintiff caused by the conduct of the defendants.

Surprisingly, the District Court denied the defendants' Motion to Dismiss, without a reasoned explanation. [Appendix B.]

The defendants filed a Petition for a Writ of Mandamus in the United States Court of Appeals for the Ninth Circuit on March 1, 2006, case number 06-71204. In this petition, the defendants renewed their jurisdictional arguments and claimed irreparable harm in having to defend their religious beliefs in court. Months later, the Ninth Circuit denied the Petition in a brief Order filed June 23, 2006. [Appendix A.] The full text of the Order is as follows:

> Petitioners have not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. United States District Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied. All pending motions are denied as moot.
>
> No motions for reconsideration, rehearing, clarification, or any other submissions shall be filed or entertained in this closed docket.

[Appendix A.]

In light of this Order, it was impossible for the petitioners to seek rehearing.

In this Petition for a Writ of Certiorari, petitioners claim that the rulings of the District Court and the Ninth Circuit are directly inconsistent with the opinions of the Supreme Court of the United States. Petitioners seek the intervention of this Court, in order to preserve religious liberty, to prevent a secular court from adjudicating matters of religious belief, to avoid abuse of RICO by plaintiffs not suffering financial loss at the hands of the defendant, and to clarify the scope of the jurisdiction of a United States Court of Appeals to deny mandamus where there is irreparable harm as a matter of law.

REASON FOR GRANTING PETITION

I. No Court in the United States of America Has Subject Matter Jurisdiction to Adjudicate a Claim That Involves Proof of the Truth or Falsity of Religious Beliefs, and Any Such Claim Must Be Dismissed.

In *United States v. Ballard*, 322 U.S. 78, 64 S.Ct. 882, 88 L.Ed. 1148 (1944), the defendants were indicted and convicted of using, and conspiring to use, the United States mails to defraud. It was charged that "certain designated corporations were formed, literature distributed and sold, funds solicited, and memberships in the I Am movement sought 'by means of false and fraudulent representations, pretenses, and promises.'" 322 U.S. at 79. All of these alleged false and fraudulent representations covered the defendants' "alleged religious doctrines or beliefs." 322 U.S. at 79. Among the representations were the claims that Mr. Donald Ballard and Ms. Edna W. Ballard "had, by reason of supernatural attainments, the power to heal persons of ailments and diseases and to make well persons afflicted with any diseases, injuries, or ailments." 322 U.S. at 80. It was

alleged in the indictment that the defendants knew that each representation was false, and each was made in order to defraud persons of money, property, and other things of value, and to convert these items to the use and benefit of the defendants. 322 U.S. at 80.

The defendants in the *Ballard* case were convicted after a jury trial.

The key portion of this court's opinion in *Ballard* is as follows:

> [W]e do not agree that the truth or verity of respondents' religious doctrines or beliefs should have been submitted to the jury. Whatever this particular indictment might require, the First Amendment precludes such a course, as the United States seems to concede. 'The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.' *Watson v. Jones*, 13 Call. 679, 728, 20 L.Ed. 666. The First Amendment has a dual aspect. It not only 'forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship' but also 'safeguards the free exercise of the chosen form of religion.' *Cantwell v. State of Connecticut*, 310 U.S. 296, 303, 60 S.CT. 900, 903, 84 L.Ed. 1213, 128 A.L.R. 1352. 'Thus the Amendment embraces two concepts,-freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.' *Id.*, 310 U.S. at pages 303, 304 S.Ct. at page 903, 84 L.Ed. 1213, 128 A.L.R. 1352. Freedom of thought, which includes freedom of religious

> belief, is basic in a society of free men. *West Virginia State Board of Education by Barnette*, 319 U.S.624, 63 S.Ct. 1178, 87 L.Ed. 1628, 147 A.L.R. 674. It embraces the right to maintain theories of life and death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom.

322 U.S. at 86-87.

The case was then remanded for further proceedings consistent with this Court's decision. 322 U.S. at 88.

The *Ballard* case is directly on point with respect to the present lawsuit brought by plaintiff Valerija Kachavos. She

alleges that the defendants fraudulently solicited funds, not from her but from church members, by making false promises of a supernatural character. These matters rest on religious doctrine and belief. Since *Ballard* holds that no court has jurisdiction to adjudicate the truth or falsity of religious beliefs, then no court has jurisdiction to decide the truth or falsity of the plaintiff's allegations. Subject matter jurisdiction is therefore absent, requiring dismissal of the case.

II. No Court Has Jurisdiction to Entertain a Claim Under the Racketeer Influenced and Corrupt Organizations Act (RICO), Where the Claim Requires Proof of the Truth or Falsity of Religious Beliefs and Where the Defendants' Alleged Wrongful Conduct Did Not Proximately Cause Any Financial Loss to the Plaintiff.

In their Petition for a Writ of Mandamus, the defendants argued that plaintiff Valerija Kachavos lacks standing to pursue her purported RICO claim because she had failed to allege any injury to her business or property caused by the conduct of the defendants and because no court has jurisdiction to decide a RICO claim if it requires adjudication of the truth or falsity of religious beliefs.

On June 5, 2006, this Court handed down its decision in *Anza v. Ideal Steel Supply Corp.*, __ U.S. __, 126 S.Ct. 1991, 164 L.Ed.2d 720 (2006). In this case, the Court upheld the petitioners' view of the law, ruling that a direct injury caused by the defendant, representing harm to the plaintiff's business or property, is required to state a RICO claim. Here, there is no such allegation. Rather, the plaintiff alleges fraudulent

religious representations to large numbers of people other than herself. She has no cause of action and no standing to pursue her claim, and jurisdiction is therefore absent.

III. Where a Federal District Court Has Exercised Jurisdiction in Violation of a Defendant's Constitutional Rights, Immediate Irreparable Harm Results, Thereby Depriving a Circuit Court of Appeals of the Discretion to Deny a Petition for a Writ of Mandamus Without Reaching the Merits of the Constitutional Issues Presented.

In its Order denying mandamus, the United States Court of Appeals did not reject the petitioners' contentions on the merits. The court did not rule that the District Court has jurisdiction to adjudicate the truth or falsity of religious beliefs. The Ninth Circuit did not find that the plaintiff had adequately pleaded a RICO cause of action, in spite of the absence of a predicate act and in spite of the absence of financial harm to the plaintiff. Rather, the Ninth Circuit simply cited its own decision in *Bauman v. United States District Court*, 557 F.2d 650 (1977).

In *Bauman*, the Ninth Circuit identified "five specific guidelines" governing the exercise of discretion with respect to petitions for extraordinary writs. 557 F.2d at 654-655. In this case, all five of the guidelines were satisfied as a matter of law, except perhaps the first and most important of them, the existence of irreparable harm making a future appeal inadequate. In citing *Bauman* and in denying mandamus, the Ninth Circuit ruled in a manner inconsistent with this Court's decision in *Elrod v. Burns*, 427 U.S. 347, 96 S.Ct. 2673, 49

L.Ed.2d 547 (1976), overruled in part on other grounds by *Branti v. Finkel*, 445 U.S. 507 (1980).

In *Elrod*, this Court ruled that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." 427 U.S. 347, 373, 96 S.Ct. 2673, 2690.

It is respectfully submitted that, under *Elrod*, the continued maintenance of the *Kachavos* lawsuit represents irreparable harm to the defendants in the District Court and the petitioners here. In view of this irreparable harm, the Ninth Circuit did not have the discretion to refuse to protect the petitioners' First Amendment freedoms.

In *Tilton v. Marshall*, 925 S.W.2d 672 (1996), the Supreme Court of Texas held that mandamus relief was required in order to prevent adjudication by a lower court of the truth or falsity of religious beliefs. This Court should make the same ruling. The Supreme Court of the United States should continue to protect religious liberty, as enshrined in the First Amendment.

IV. Conclusion.

For all of the foregoing reasons, the petitioners respectfully request that the Supreme Court of the United States grant this petition and review the matter. Their religious freedom is at stake.

Respectfully submitted,

J. C. JOYCE
JOYCE AND POLLARD
515 South Main Street
Suite 300
Tulsa, Oklahoma 74103
(918) 585-2751

ROY G. WEATHERUP
Counsel of Record
STEVEN G. GATLEY
LEWIS BRISBOIS BISGAARD & SMITH, LLP
221 North Figueroa Street
Suite 1200
Los Angeles, California 90012
(213) 250-1800

Attorney for Petitioners

APPENDIX

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED JUNE 23, 2006

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 06-71204

D.C. No. CV-05-7197-GPS
Central District of California, Los Angeles

In re: SAINT MATTHEW'S CHURCHES, INC.

SAINT MATTHEW'S CHURCHES, INC.; et al.,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,

Respondent,

VALERIJA KACHAVOS,

Real Party in Interest.

ORDER

Before: CANBY, T.G. NELSON and KLEINFELD, Circuit Judges.

Appendix A

Petitioners have not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. United States Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied. All pending motions are denied as moot.

No motions for reconsideration, rehearing, clarification, or any other submissions shall be filed or entertained in this closed docket.

APPENDIX B — CIVIL MINUTES - GENERAL
DATED NOVEMBER 21, 2005

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 05-7197-GPS(FMOx)

CIVIL MINUTES - GENERAL

Valerija Kachavos

v.

James Eugene Ewing, et al

Present: The Honorable GEORGE P. SCHIAVELLI,
United States District Judge

Krista Barrett	Rosalyn Adams	N/A
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiffs: Joseph E. Deems

Attorneys Present for Defendants: J.C. Joyce, Steven Gatley

Proceedings:

PLAINTIFF'S MOTION FOR PERMANENT INJUNCTION (filed 10/17/05) DEFENDANTS' MOTION TO STRIKE CERTAIN NUMBERED PARAGRAPHS OF PLAINTIFF'S COMPLAINT AS IMMATERIAL TO PLAINTIFF'S CAUSE OF ACTION, etc.; MOTION FOR MORE DEFINITE STATEMENT; MOTION TO DISMISS (filed 10/21/05)

Appendix B

Court hears argument.

Plaintiff's motion for permanent injunction is denied. Pursuant to counsels' stipulation in open Court, documents are to be maintained in form produced and not to be tampered with absent further order of the Court.

Defendants' motions are denied. Defendants may have 30 days to answer.

Initials of Preparer [illegible]